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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

OCT 30 2009

KRISTIN K. MAYES, Chairman
 GARY PIERCE
 PAUL NEWMAN
 SANDRA D. KENNEDY
 BOB STUMP

DOCKETED BY

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IN THE MATTER OF THE APPLICATION
 OF BOB B. WATKINS D/B/A EAST SLOPE
 WATER COMPANY FOR AN
 EMERGENCY RATE INCREASE.

DOCKET NO. W-01906A-09-0283

DECISION NO. 71322OPINION AND ORDER

DATE OF HEARING:

August 18, 2009

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Belinda A. Martin

IN ATTENDANCE:

Kristin K. Mayes, Chairman
 Paul Newman, Commissioner
 Sandra D. Kennedy, Commissioner

APPEARANCES:

Bob B. Watkins, Owner, on behalf of Bob B. Watkins
 d/b/a East Slope Water Company; and

Kevin Torrey, Staff Attorney, Legal Division, on behalf
 of the Utilities Division of the Arizona Corporation
 Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

* * * * *

FINDINGS OF FACT

1. On June 2, 2009, Bob B. Watkins d/b/a East Slope Water Company ("ESWC" or
 "Company"), filed with the Commission an application requesting an emergency surcharge
 ("Application"). Filed simultaneously with the Application were emergency surcharge applications
 for two other companies owned by Mr. Watkins: Antelope Run Water Company ("ARWC"), Docket
 No. W-02327A-09-0284, and Indiada Water Company ("IWC"), Docket No. W-02031A-09-0285.

1 2. Pursuant to a Procedural Order docketed June 17, 2009, a Procedural Conference was
2 held on June 26, 2009. During the Procedural Conference, ESWC, ARWC, and IWC and the
3 Commission's Utilities Division Staff ("Staff") agreed to certain deadlines in order to coordinate the
4 timing of filings and of the hearings for ESWC, ARWC and IWC.

5 3. On June 30, 2009, a Procedural Order was issued setting a hearing in this matter for
6 August 18, 2009, and establishing coordinated deadlines.

7 4. On July 16, 2009, ESWC filed an Affidavit of Mailing, averring that notice of the
8 hearing was mailed to all customers on July 15, 2009.

9 5. On July 24, 2009, Staff filed its Staff Report, recommending approval of the
10 Application, but using Staff's proposed emergency surcharge.

11 6. On August 8, 2009, ESWC filed its response to the Staff Report, disagreeing with
12 certain of Staff's findings and setting forth a revised emergency surcharge structure ("Response").

13 7. A hearing on the Application was held on August 18, 2009, before a duly authorized
14 Administrative Law Judge at the Commission's Tucson office. Public comment was taken prior to
15 the hearing. After public hearing, the matter was taken under advisement pending submission of a
16 Recommended Opinion and Order to the Commission.

17 8. On August 21, 2009, ESWC filed a late-filed exhibit consisting of invoices supporting
18 assertions made in its Response.

19 9. In response to the Application, the Commission received a total of seventeen written
20 customer comments and one customer appeared during the public comment session at hearing to
21 provide opinion related to the requested increase. No customer comments were received in response
22 to the Staff Report or the Response. Many of the customers who provided comment objected to any
23 rate increase and one customer complained that the current rates are too high. Others believed that a
24 rate increase is acceptable, but objected to the amount the Company requests. Several customers
25 complained that they encountered pressure or other system problems. Some asserted that a flat
26 surcharge is unfair to those customers who use less water as opposed to those who use more water
27 and whose high demand creates a strain on the system.
28

1 **The Application**

2 10. ESWC is a Class 'C' sole proprietorship owned by Mr. Watkins and provides water
3 service to 822 connections in an unincorporated area near Sierra Vista, Cochise County, Arizona.

4 11. In Decision No. 51282 (August 20, 1980), as amended by Decision No. 51936 (March
5 12, 1981)¹ the Commission approved the sale of assets and transfer of the Certificate of Convenience
6 and Necessity ("CC&N") by S.V.E. Water Company to ESWC.²

7 12. ESWC's current rates were approved by the Commission in Decision No. 57076
8 (October 1, 1990).

9 13. ESWC hired Southwestern Utility Management ("SWUM") in September 2008, to
10 manage the Company and to prepare the Application.³ In its Application, ESWC requested approval
11 by the Commission of an emergency surcharge stating that it is insolvent and is concerned that it may
12 run out of water.

13 14. ESWC lists a number of water system improvements that it believes are needed,
14 including, 1) additional storage capacity, 2) refurbishment of an existing storage tank, 3) deepening
15 of wells due to the depletion of the water table, and 4) replacement of electrical control panels. The
16 Company notes that due to high water demand during the summer months, the current water system
17 cannot keep up with demand during those months, which results in a loss of water pressure in the
18 distribution system. ESWC asserts that without the listed improvements, its ability to provide water
19 to its customers is in doubt.

20 15. ESWC noted that it is in the process of compiling information needed to apply for a
21 loan from the Water Infrastructure Financing Authority ("WIFA") in order to make the needed
22 system improvements.

23 16. The Company also asserts that it does not generate enough revenues to meet its
24 operating expenses, including property taxes. ESWC states that, as of the date of the Application, it
25 had amassed accounts payable of approximately \$46,000. Additionally, the Company notes that over

26 ¹ The amendment related to the inclusion of a corrected legal description.

27 ² The original CC&N was granted to San Pedro Water Company, Inc., in Decision No. 34783 (October 1, 1963). The
Commission approved a transfer of the CC&N to S.V.E. Water Company in Decision No. 38670 (September 28, 1966).

28 ³ SWUM's president is Bonnie O'Connor. Ms. O'Connor prepared the Application and the Company's Response on
behalf of ESWC with the assistance of a consultant, Sonn Rowell.

1 the years, the Watkins family has advanced ESWC a total of \$53,523, and the Company acquired a
2 line of credit from Wells Fargo in 1999, the current balance of which is \$114,867.⁴ The Company
3 concluded that it is unable to meet its expenses and fears insolvency.

4 17. ESWC's current rates are a per customer monthly minimum charge of \$9.00, which
5 includes the first 2,000 gallons of water use. The commodity rate is \$1.71 per 1,000 gallons over
6 2,000 gallons of usage.

7 18. For purposes of the Application, the Company used a generalized average usage
8 amount of 8,000 gallons, rather than the actual average or median water use. As such, for a current
9 monthly bill based on 8,000 gallons of usage, 2,000 gallons of which are already included, the
10 commodity charge would be \$10.26. Coupled with the minimum monthly charge, the average
11 monthly bill for ESWC customers using 8,000 gallons of water is \$19.26.

12 19. To determine the amount of the emergency surcharge, the Company used its 2009
13 projections based on historical data. According to its 2009 projections, ESWC's total operating
14 revenues for 2009 would be \$173,195 and its operating expenses would be \$207,902, for a projected
15 net operating loss of \$34,706. ESWC added to that amount a below-the-line interest expense of
16 \$10,042, for a total net loss of \$44,748.

17 20. Based on these numbers, ESWC calculated its projected monthly operating loss at
18 \$3,729. It then added in the monthly amounts needed to cover payments on the delinquent accounts
19 payable (\$4,331 per month for 12 months), the Wells Fargo line of credit (\$3,796 per month for 30
20 months), and the Watkins' notes payable (\$4,212 for 12 months). By adding these amounts to the
21 projected monthly operating losses of \$3,729, the Company concludes it has a \$16,068 operating
22 loss/cash shortage each month. ESWC then divided the \$16,068 monthly operating loss/cash
23 shortage by the number of connections, 822, and arrived at a per customer monthly surcharge amount
24 of \$19.55.

25 21. Using the Company's surcharge combined with the \$19.26 current bill based on 8,000
26 gallons of usage, the average customer's bill would increase to \$38.81.

27 ⁴ ESWC did not obtain Commission Approval for the acquisition of any debt. Ms. O'Connor testified that since SWUM
28 became the Company's manager, ESWC has not borrowed any money on this line of credit. She stated that she has made
it clear to the Company that it must obtain Commission approval before incurring debt. (Tr. at p. 49)

1 Staff Report

2 22. In its Staff Report, Staff found that a financial emergency exists and recommended
3 approval of the Company's Application, but using Staff's proposed emergency surcharge of \$7.60 per
4 customer, per month.

5 23. Staff notes that, for the purposes of engineering analysis in an emergency surcharge
6 case, Staff does not conduct a site inspection. Instead, Staff reviews a company's Annual Report for
7 system information, water pumped versus water sold and number of connections.⁵ According to the
8 Company's Annual Reports, the current water system consists of five active wells with a total
9 production capacity of 562 gallons per minute, two storage tanks with a total storage capacity of
10 250,000 gallons, two booster systems, fire hydrants⁶ and a distribution system. Based on this
11 information, Staff determined that ESWC has adequate production and storage to serve its customers.

12 24. Staff engineering witness, Dorothy Hains, testified at hearing that she reviewed her
13 calculations given the Company's later assertion in its Response that only three wells are currently
14 operating and found that ESWC still had sufficient production and storage to meet customer
15 demands.⁷

16 25. In the Staff Report, Staff acknowledged the Company's desired system upgrades, but
17 notes that ESWC did not submit any cost estimates for any improvements it asserts are needed to
18 alleviate the claimed emergency.⁸ Staff noted that ESWC is applying with WIFA for a \$5.5 million
19 loan to implement the needed system improvements and believes that this is the more appropriate
20 means of funding the necessary upgrades.⁹

21 26. ESWC has a curtailment tariff in place, but has not employed it this year. Ms.
22 O'Connor testified that any outages have been due to various mechanical issues, rather than water
23

24 ⁵ Tr. at p. 117.

25 ⁶ According to the Company's engineering witness, Gary Newman, the Company has three hydrants, but the system does
26 not produce enough water to meet required fire flow. Mr. Newman testified that the fire department signed a waiver
acknowledging the lack of adequate water production for fire-fighting purposes. (Tr. at p. 84)

27 ⁷ Tr. at p. 118 and 125.

⁸ See also, Tr. at p. 136.

28 ⁹ In her testimony, Ms. O'Connor stated that ESWC had applied for a grant for system upgrades from the Border
Environmental Cooperation Commission ("BECC"), but was unsuccessful because the BECC considered ESWC to be a
privately-held company. (Tr. at p.24)

1 shortages.¹⁰

2 27. The Arizona Department of Environment Quality reported to Staff that the ESWC's
3 water system has no deficiencies and has determined that this system is currently delivering water
4 that meets water quality standards required by the Arizona Administrative Code, Title 18, Chapter 4.

5 28. Staff ultimately determined that, from an engineering perspective, an emergency does
6 not exist and Staff does not recommend any emergency surcharge to address system problems.

7 29. Although Staff found that an emergency does not exist from an engineering
8 standpoint, Staff did find that ESWC's current financial situation constitutes an emergency because
9 of the Company's inability to meet its financial obligations, calling into question ESWC's solvency.

10 30. For the purposes of its review of an emergency surcharge application, Staff witness,
11 Darak Eaddy, testified that Staff performs its evaluation based on financial information submitted by
12 a company, rather than conducting a full audit of a company's financial status.¹¹ In reviewing the
13 Company's proposed surcharge amount, Staff considered the appropriateness of the items included
14 by the Company in its emergency surcharge calculation.

15 31. According to the Staff Report, because the delinquent accounts payable included by
16 the Company are for previous periods of service, including them is improper and Staff disallowed
17 their inclusion. Ms. O'Connor testified that she understands Staff's position.¹²

18 32. Staff also disagreed with ESWC's inclusion of the Wells Fargo credit line because the
19 Company never sought approval for the loan from the Commission and Staff has never had an
20 opportunity to review the appropriateness of the debt. Additionally, Staff noted that the Company
21 has a history of intermingling funds among its three companies and is concerned about the use of the
22 funds.¹³ Staff points out that ESWC has held the Wells Fargo line of credit since 1999 without any
23 rate consideration, therefore Staff determined that emergency rate relief for this item is not
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25 ¹⁰ Tr. at p. 23-24.

26 ¹¹ Tr. at p. 37.

27 ¹² Tr. at p. 30.

28 ¹³ In the Decision regarding ESWC's last rate increase, the Commission noted the Company had a practice of moving money between its three companies when needed and also intermingling personal funds of the owner. As a result, ESWC was ordered to document properly the allocation of expenses between ESWC, its owners or any affiliated entities. Decision No. 57076, page 16. According to Ms. O'Connor's testimony, the Company has kept good records regarding the allocation of expenses among ESWC, ARWC and IWC. (Tr. at p. 34)

1 appropriate.

2 33. Staff also disagreed with the inclusion in the surcharge calculation of the Watkins'
3 notes payable for these same reasons.

4 34. Even with the removal of these amounts from ESWC's calculations, Staff found that
5 the Company is unable to meet operating expense requirements, and determined that it is facing a
6 financial emergency, concluding that emergency rate relief is warranted.

7 35. Staff arrived at its recommended surcharge in a different manner from that of the
8 Company. Rather than use ESWC's total 2009 projections based on historical data, Staff used as a
9 starting point the Company's actual income and expense information for January 1, 2009, through
10 April 30, 2009, using the data provided by the Company.

11 36. According to this data, as of the end of April 2009, ESWC had collected \$40,116 in
12 water revenues resulting in a monthly average income for these four months of \$10,029. This
13 amount annualized over the course of twelve months equals \$120,348, as opposed to the \$173,195
14 projected by the Company.¹⁴

15 37. As of the end of April 2009, the Company had \$72,390 in operating expenses,
16 resulting in a monthly average expense for the four months of \$15,371. This amount annualized over
17 the course of twelve months equals \$195,354, as opposed to the \$207,902 in annual operating
18 expense projected by the Company.¹⁵

19 38. Based on this data, Staff calculated the Company's monthly average operating loss as
20 \$5,342, plus \$909 per month for property taxes that were not included in ESWC's statement of its
21 monthly operating loss. Therefore, Staff's recommendation is based on an average monthly net loss
22 of \$6,251. Staff divided this amount by the number of connections and arrived at its recommended
23 emergency surcharge rate of \$7.60 per customer, per month.

24 39. Staff notes that, while its projected monthly loss is higher than the Company's, Staff
25 believes it is more reflective of ESWC's additional monthly financial requirements needed in order to

26 ¹⁴ The Company's Calculation of 2009 Projected Income Statement attached to the Application notes that for the period
27 ending December 31, 2008, ESWC's actual water revenue was \$190,811.

28 ¹⁵ The Company's Calculation of 2009 Projected Income Statement notes that for the period ending December 31, 2008,
ESWC's actual expenses were \$192,186. As such, for 2008, the Company had a net operating loss of \$1,375. The
Company also added to this net loss certain other income/expenses of (\$4,442), for a total net loss in 2008 of \$5,817.

1 allow it to continue to provide service. It is notable that the \$10,029 average monthly operating
2 revenue adopted by Staff is based on revenues received in January through April, 2009. These
3 months are traditionally lower water usage months. As such, Staff's calculations of annualized
4 revenue of \$120,348 do not include the higher revenues that might be expected in the higher use
5 summer months, and its total revenue calculations may be low.

6 40. According to Staff, the Company's proposed rates would increase the typical
7 residential bill with 8,000 gallons of usage from \$19.26 to \$38.81; an overall increase of \$19.55, or
8 101.5 percent. ESWC's requested emergency rates would produce an additional \$16,070 per month
9 in revenues.

10 41. Staff's recommended rates would increase the typical residential bill with 8,000
11 gallons of usage from \$19.26 to \$26.86, an overall increase of \$7.60, or 39.5 percent. Staff's
12 recommended emergency surcharge would produce approximately an additional \$6,251 per month in
13 revenues; an amount Staff asserts is sufficient to address the Company's operating shortfall during
14 the pendency of a permanent rate application.

15 42. Staff also recommends that the Company be required to post a bond or an irrevocable
16 sight draft letter of credit in the amount of \$35,000 to ensure that there is money available to refund
17 to ratepayers if the Commission determines in the permanent rate case that the emergency surcharge
18 was too large. Although Staff's recommended surcharge will produce approximately \$75,000 on an
19 annual basis, Staff recommends a lower performance bond or irrevocable sight draft letter of credit,
20 in recognition of the difficulty the Company may have in securing such a large performance bond or
21 irrevocable sight draft letter of credit. In addition, Staff noted that the Commission has reduced the
22 amount of the bond in cases where a company lacked the resources and ability to secure such a high
23 bond.

24 43. In addition to the above recommendations, Staff also recommended the following:

- 25 a. that the emergency surcharge be interim;
- 26 b. that the interim rate be subject to refund pending the decision resulting from the
27 permanent rate increase case required to be filed in this proceeding;
- 28 c. that the Company be directed to file within 30 days of the Decision, a revised rate

1 schedule reflecting the emergency surcharge with Docket Control, as a compliance
2 item in this docket;

3 d. that the Company notify its customers of the surcharge, and its effective date, in a
4 form acceptable to Staff, by means of an insertion in the Company's next regularly
5 scheduled billing;

6 e. that the Company file a full rate application utilizing a December 31, 2009, test year
7 no later than April 30, 2010;

8 f. that if the Company believes it will need to incur debt in order to solve its operation
9 problems, it file a financing application concurrent with the rate application; and

10 g. that the Company file with Docket Control, as a compliance item in this docket,
11 documentary evidence that the Company has posted a bond or an irrevocable sight
12 draft letter of credit in the amount of \$35,000, prior to implementing the emergency
13 rate increase authorized in this proceeding.

14 **Company's Response and Revised Surcharge Calculation**

15 44. In its Response, ESWC stated that, given the technical and financial issues facing the
16 Company, a \$7.60 surcharge per customer per month is not sufficient to meet its needs. The
17 Company asserts that Staff's recommended surcharge will not produce sufficient funds to allow it to
18 adequately maintain the water system until such time as the Commission issues its decision in the
19 permanent rate case.

20 45. ESWC concedes that it should have filed a rate case sooner; however, in weighing the
21 costs of prosecuting a rate case against the immediate needs of maintaining the water system, the
22 Company felt its priority was to spend the money to ensure that customers received water, rather than
23 incur the expense of filing a rate application.¹⁶

24 46. The Company claims in its Response that Staff's conclusion that there is no
25 emergency from an engineering standpoint is erroneous because it fails to take into consideration the
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27 ¹⁶ Although Mr. Watkins stated that another reason the Company has not filed for a rate increase since 1990 is that, in its
28 last rate case, the Commission imposed a rate decrease. However, Decision No. 57076 indicates that the Commission
actually granted the Company an increase. Additionally, the Company sought retroactive Commission approval of debt
the Company obtained without Commission approval, but the Commission denied the request.

1 number of systemic emergency situations that occur, sometimes on a weekly basis. For example, the
2 Company related that shortly before the hearing, its main well supplying the system failed. It cost the
3 Company over \$22,000 to repair the problem and the entire system was down for one day.¹⁷ The
4 Response also states that the problem is compounded by the fact that this well has no storage capacity
5 and water is pumped directly out of the well into a pressure tank with no boosters.

6 47. The Company's engineering witness, Gary Newman, related that, with no storage
7 available at this well site, and because of customer demand, the system must run 24 hours a day,
8 seven days a week with no rest for the pump and the motor. ESWC asserts that because this
9 equipment is constantly running, pumps and motors burn up very quickly, needing frequent
10 replacement.¹⁸ Mr. Newman testified that between the five wells, ESWC has had to replace certain
11 mechanical equipment about two times last year and two times this year. He stated that these
12 replacements addressed different problems involving the pump, motors or wiring.¹⁹ Mr. Newman
13 also testified that the distribution lines are old and undersized and break frequently.²⁰

14 48. The Company states one of its other wells has 50,000 gallons of storage, but storage
15 cannot keep up with customer demand, with the result that this equipment is also running
16 continuously.

17 49. Another well has sufficient storage at 200,000 gallons, but it is connected to a well
18 that pumps only 50 gallons per minute, the distribution pipes are old and undersized, and it is not
19 interconnected with the entire system.²¹ Further, according to the Company's Response, the system
20 connected to this well and storage tank has 2-inch and 4-inch transite pipes and any increased
21 pressure on the system to supply water to the other portions of the service area would break the lines.

22 50. There was conflicting information about the condition of the 200,000 gallon storage
23 tank. In the Application and Response, ESWC stated that this storage tank was corroded and cannot
24 be used. However, Mr. Newman testified that both of the Company's storage tanks are in use,²² but
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26 ¹⁷ Tr. at p. 50.

27 ¹⁸ Tr. at p. 76-77.

28 ¹⁹ Tr. at p. 78.

²⁰ Tr. at p. 79-80.

²¹ Tr. at p. 152.

²² Tr. at p. 83.

1 re-emphasized that the pumps for wells connected to the two storage tanks are constantly running to
2 keep up with demand, allowing little opportunity to store water.

3 51. Finally, according to ESWC, the Company has two other wells that are not being used,
4 because they are "sanded-in," and only pump sand mixed with water.

5 52. Given the foregoing, ESWC disagrees with Staff's conclusion that an emergency
6 situation does not exist from an engineering perspective. The Company states:

7 ESWC cannot remain viable if it must continue to incur substantial repair and
8 maintenance costs until the infrastructure problems are corrected. These large repair
9 expenses in addition to its normal monthly operating costs cannot be feasibly supported
10 in the interim, unless ESWC has a sufficient emergency surcharge in place until
11 permanent rates can be established in a rate proceeding.²³

12 53. ESWC acknowledges that a \$19.55 surcharge is substantial, but believes that its
13 customers have had the benefit for many years of paying extremely low rates in comparison to those
14 of other water companies. After review of both the Staff Report and the customer comments, ESWC
15 revised its surcharge application to request a lower emergency surcharge, which the Company
16 believes realistically addresses its repair and maintenance costs.

17 54. Attached to its Response is ESWC's Revised Calculation of Monthly Surcharges. The
18 Company used as its starting point for the revised calculation Staff's recommended emergency
19 surcharge of \$7.60, which will generate additional monthly revenue of \$6,247.20.²⁴ ESWC then
20 noted that Staff used the repair and maintenance information submitted by the Company for January
21 through April 2009, in the amount of \$2,316 resulting in a monthly repair and maintenance expense
22 of \$579 per month.

23 55. ESWC asserted this number was too low because, as noted above, in July the main
24 well failed and it cost the Company over \$22,000 to repair it. The Company filed copies of the
25 supporting invoices as a late-filed exhibit. ESWC's revised calculations added this cost to the
26 expense amount already allowed by Staff for a total operations and maintenance expense through

27 ²³ Response to Staff Report dated August 3, 2009, page 2.

28 ²⁴ Staff determined that the Company's monthly loss is \$6,251. Staff then divided that number by 822, the number of
connections, which equals 7.604, rounding down to a \$7.60 surcharge. Because of rounding, the actual monthly amount
achieved by the \$7.60 surcharge is \$6,247.20, rather than \$6,251.

1 July of \$24,635.85. Under the revised calculations, the inclusion of these repairs added an additional
 2 \$2,940.41 per month to Staff's proposed monthly repair expenses of \$579, for a revised total monthly
 3 revenue requirement of \$9,187.61. ESWC used this figure as a basis for determination of its revised
 4 surcharge calculations.

5 56. Staff objects to the inclusion of the \$22,000 repair and maintenance expense because
 6 such items are more appropriately classified as plant and more properly included in rate base
 7 calculations.²⁵

8 57. The Company's consultant, Sonn Rowell, responded that ESWC had to replace items
 9 normally classified as plant, such as pump and motors, so frequently that the Company has not
 10 received the full benefit of the depreciation, and they begin to take on a character of repairs and
 11 maintenance.²⁶ The Company believes that the recent \$22,000 repairs should be considered from an
 12 historical cash flow standpoint and should be included in operating expenses for the purposes of the
 13 Application.²⁷

14 58. ESWC proposed a two-prong surcharge structure. First, the Company proposed a flat
 15 monthly emergency surcharge of \$5.00 added to the monthly minimum of \$9.00. According to
 16 ESWC, this surcharge would generate \$4,110 in revenues per month.

17 59. Second, the Company also proposed a commodity surcharge of \$.80 per 1000 gallons
 18 of water use. Applying the \$.80 emergency commodity surcharge to the total average water usage of
 19 7,685 per customer, per month²⁸ equals an additional \$6.15 per customer in revenues for total average
 20 commodity surcharge revenues of \$5,055.30.²⁹ Combined with the \$5.00 emergency surcharge, the
 21 average customer will have an increase of \$11.15. ESWC believes that this proposal addresses
 22 customer's assertions that use of only a flat surcharge is unfair to those who use less water.³⁰

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 24 ²⁵ Tr. at p. 140-141.

25 ²⁶ Tr. at p. 90-92.

26 ²⁷ Tr. at p. 97.

27 ²⁸ Although the average monthly water usage per customer is 7,685, the current rates include in the minimum monthly
 28 charge the first two thousand gallons of usage. However, for purposes of calculating the emergency commodity
 surcharge, the Company used the full amount of water usage.

²⁹ Based on the total average monthly water usage of 7,685 per customer, the amount of the average commodity surcharge
 per customer would be \$6.15, not \$4.57 as indicated in the Company's revised calculations. Ms. Rowell acknowledged
 this error during her testimony. (Tr. at p. 107)

³⁰ Tr. at p. 102.

60. Adding the total emergency surcharge of \$11.15 to the average customer's current bill of \$18.72 results in a total average bill of \$29.87. This equals an overall increase to the current average bill of 59.6 percent, an amount significantly less than that originally proposed by the Company, but approximately 20 percent higher than that proposed by Staff.

Existence Of An Emergency

61. Arizona Attorney General Opinion No. 71-17 (May 27, 1971) states that it is appropriate to grant interim rates, or in this instance an interim surcharge, as an emergency measure when sudden change brings hardship to a company, when the company is insolvent, or when the condition of the company is such that its ability to maintain service pending a formal rate determination is in serious doubt. ESWC has the burden of meeting one of the criteria in order for the Commission to find an emergency exists and grant the Application.

62. The first justification for finding an emergency is when a sudden change brings hardship to a company. Although Ms. O'Connor testified that ESWC believes all three of the emergency criteria were met,³¹ none of the evidence presented by ESWC demonstrated any sudden change to the Company's situation thereby creating its current difficulties. The Company has been dealing with system issues and financial difficulties for years, but has only just now applied for an emergency rate increase. We believe that the Company does not meet this criterion.

63. The second point, the insolvency of the Company, is not in dispute. Staff agrees with ESWC's assertion that it is insolvent as it is unable to meet its month-to-month financial obligations, and the evidence supports this conclusion.

64. Finally, there is the question of whether the condition of the company is such that its ability to maintain service pending a formal rate determination is in serious doubt. Evidence presented by the Company supports the fact that the system is in need of repair or replacement and ESWC is in the process of applying to WIFA for a loan to overhaul the aging water system.

65. Staff's position is that, although the Company has experienced system problems in the past and continues to experience problems in the present, none of them rise to the level of an

³¹ Tr. at p. 53.

1 immediate emergency necessitating a surcharge to address those issues. Further, ESWC presented
2 neither specific plans for immediately needed repairs nor any cost estimates for repairs. We also note
3 that the Company has not implemented any water use curtailments because of system, pumping, or
4 water table problems.

5 66. While it is possible that the Company may require additional repairs between now and
6 the issuance of a decision in a permanent rate case, we find that the condition of the company is such
7 that its ability to maintain service pending a formal rate determination is not in serious doubt.

8 67. Although the Company has not met its burden of meeting the first and third criteria
9 supporting a finding of an emergency, it has met the second criterion, and therefore, we find an
10 emergency exists.

11 **Emergency Surcharge**

12 68. ESWC asserts that because it faces ongoing problems with system malfunctions, the
13 amount proposed by Staff of \$7.60 per customer, per month is insufficient to meet its cash flow
14 needs. As such, the Company proposes a two-pronged emergency surcharge consisting of a flat
15 \$5.00 monthly surcharge and a commodity surcharge of \$.80 per thousand gallons of usage. Aside
16 from aiding it in addressing its repairs and maintenance expenses, the Company asserts its proposed
17 commodity surcharge is beneficial because it places a greater burden on the customers who use more
18 water. This proposal will generate an additional \$9,187.61 per month in revenue, on average.

19 69. Staff's proposed interim emergency surcharge of \$7.60 per customer, per month, until
20 the resolution of a permanent rate case, will provide ESWC with an additional \$6,251 per month to
21 meet its monthly financial requirements. Staff's recommendation has the benefit of providing the
22 Company with a sum certain each month, allowing ESWC to plan for expenditures.

23 70. We find that Staff's proposal is the more reasonable proposal for the reasons stated
24 below.

25 71. First, Staff's flat emergency surcharge will provide ESWC with a known amount of
26 revenue each month, whereas the use by the Company of a commodity surcharge will cause
27 fluctuations in the Company's monthly revenue making it more difficult for it to plan financially. We
28 acknowledge the Company's commodity surcharge proposal was designed to address customer

1 concerns about fairness and agree that ESWC needs to have a more appropriate commodity rate
2 structure given the issues surrounding the area's decreasing water table. We believe, however, that
3 the question of an increased commodity charge or tiered commodity rate structure will be better
4 addressed in the permanent rate case, after Staff has had an opportunity to address customer water use
5 data and to review more fully the Company's finances in conjunction with the financing application
6 the Company intends to file.

7 72. Second, we are concerned by ESWC's requested inclusion of a \$22,000 repair in its
8 revised calculations. This expenditure has created financial issues for the Company, but to allow this
9 amount to be included as part of the monthly repairs and maintenance represents an extraordinary
10 expense that may or may not repeat in the future. Inclusion of this amount possibly may result in
11 artificially high expense allowance, which may result in over-collection. We note that in 2008, the
12 Company had actual repairs and maintenance of \$6,253. For 2009, Staff's annualized repairs and
13 maintenance expense is based on \$579 per month, equaling \$6,948. The Company's 2009
14 projections with historical data projects a repairs and maintenance expense of \$6,601. These amounts
15 are fairly consistent and represent a reasonable amount for the purposes of an emergency surcharge
16 calculation.

17 73. ESWC's unaudited income and expense for the year ending December 31, 2008,
18 resulted in an operating loss of \$1,375. The Company also lists other income of \$5,600 and other
19 interest expense of \$10,042, creating a net loss in 2008 of \$5,817. However, this net loss reflects
20 interest paid on debt not approved by the Commission.

21 74. Furthermore, as noted in Finding of Fact No. 39, Staff revenue projections of \$10,029
22 per month do not take into account the higher use, and therefore higher revenue, summer months.
23 The higher revenue from the summer season will provide additional revenue for the Company to
24 address system problems and/or other financial obligations.

25 75. A review of the financial information demonstrates that if the Commission were to
26 adopt the Company's revised emergency calculations, it may create a circumstance where ESWC
27 over-collects, requiring the Company to return funds to its customers. The purpose of interim rates is
28 not to provide a profit to the Company, but rather to provide it with sufficient funds to ensure its

1 ability to maintain service pending a formal rate determination.

2 76. We believe that Staff's recommended emergency surcharge will allow the Company to
3 maintain service pending its permanent rate determination, and Staff's recommended emergency
4 surcharge of \$7.60 per customer, per month is reasonable and shall be adopted.

5 77. Staff recommended that the Company post a \$35,000 bond in order to protect
6 ESWC'S customers in the event that in the permanent rate case the interim surcharge is found to be
7 unnecessary or too high. ESWC objects to the amount of the bond, asserting that because it is
8 insolvent, this requirement is onerous. Instead, the Company requests that the bond amount be
9 reduced to \$10.³² Although this is a low amount, the Company notes that, should the interim rates be
10 deemed too high in the permanent rate case, it can then refund the overage to its customers by means
11 of a credit to their monthly bills. Ms. O'Connor notes that she has participated in other matters in
12 which the Commission has adopted this proposal in similar situations.³³

13 78. Mr. Eaddy testified that Staff is not opposed to lowering the bond requirement
14 provided that Staff's recommended surcharge is adopted.³⁴

15 79. We believe that a bond of \$10.00 is adequate under the circumstances of this case.

16 80. We find that Staff's remaining recommendations as set forth in Finding of Fact No. 43
17 are reasonable and shall be adopted.

18 81. We note that the Company has a demonstrated history of intermingling funds between
19 ESWC, ARWC, IWC, and personal funds of the owner. We believe it is reasonable to require Staff
20 to review the Company's books and records in the context of the permanent rate case to review the
21 propriety of the Company's actions.

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25 ³² Tr. at p. 112-113.

26 ³³ See for example, *In the Matter of the Application of Naco Water Company, LLC, for an Emergency Rate Increase*,
27 Decision No. 67984 (July 18, 2005); *In the Matter of the Application of Valle Verde Water Company for Implementations*
28 *of an Emergency Surcharge and Request for Access to Water Infrastructure and Request for Access to Water*
Infrastructure Finance Authority Funds, Decision No. 70098 (December 21, 2007); and, *In the Matter of the Application*
of Sonoita Valley Water Company for an Emergency Rate Increase, Decision No. 70202 (March 20, 2008).

³⁴ Tr. at p. 138 and 145.

CONCLUSIONS OF LAW

1. ESWC is a public service corporation pursuant to Article XV of the Arizona Constitution and ARS §§ 40-250 and 40-251.

2. The Commission has jurisdiction over ESWC and the subject matter of the Application.

3. Notice of the Application and hearing was provided in accordance with the law.

4. ESWC is facing an emergency within the definition set forth in Attorney General Opinion No. 71-17.

5. The interim emergency surcharge recommended by Staff is reasonable and should be implemented.

6. Staff's additional recommendations as modified, as well as Finding of Fact No. 81, are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Bob B. Watkins d/b/a East Slope Water Company's Application for an interim emergency surcharge is granted, adopting Staff's recommended surcharge of \$7.60 per customer, per month.

IT IS FURTHER ORDERED that Bob B. Watkins d/b/a East Slope Water Company shall notify its customers of the interim emergency surcharge and its effective date, in a form acceptable to Staff, by means of an insert in its next regularly scheduled billing.

IT IS FURTHER ORDERED that Bob B. Watkins d/b/a East Slope Water Company shall file with Docket Control, as a compliance item in this docket, within 30 days of the effective date of this Decision, a revised rate schedule reflecting the interim emergency surcharge.

IT IS FURTHER ORDERED that Bob B. Watkins d/b/a East Slope Water Company shall file an application for a permanent rate increase utilizing a December 31, 2009, test year, no later than April 30, 2010.

IT IS FURTHER ORDERED that if Bob B. Watkins d/b/a East Slope Water Company believes it will need to incur debt to address its system deficiencies, it shall file a financing application concurrent with above-ordered permanent rate increase application.

1 IT IS FURTHER ORDERED that Bob B. Watkins d/b/a East Slope Water Company shall
2 post a performance bond of \$10.00 or similar financial instrument, prior to implementing the interim
3 emergency surcharge authorized in this proceeding. Bob B. Watkins d/b/a East Slope Water
4 Company shall provide the original performance bond or financial instrument to the Commission's
5 Business Office for safekeeping and shall file the appropriate copies with Docket Control as a
6 compliance item in this Docket.

7 IT IS FURTHER ORDERED that should Bob B. Watkins d/b/a East Slope Water Company
8 fail to comply with the timeframes stated herein, the authorized interim emergency rates shall be
9 rescinded and that all emergency funds collected shall be refunded to customers.

10 IT IS FURTHER ORDERED that in Bob B. Watkins d/b/a East Slope Water Company's
11 permanent rate case that Staff shall review accounting treatment and allocation of expenses and plant
12 and any intermingling of funds between Bob B. Watkins d/b/a East Slope Water Company, Antelope
13 Run Water Company, Indiada Water Company and the companies' owner.

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1 IT IS FURTHER ORDERED that the rates approved herein shall be interim and subject to
 2 refund pending resolution of the required permanent rate increase.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
 6  CHAIRMAN  COMMISSIONER
 7
 8  COMMISSIONER  COMMISSIONER  COMMISSIONER
 9

10
 11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 12 Executive Director of the Arizona Corporation Commission,
 13 have hereunto set my hand and caused the official seal of the
 14 Commission to be affixed at the Capitol, in the City of Phoenix,
 15 this 30th day of OCT, 2009.

16 
 17 ERNEST G. JOHNSON
 18 EXECUTIVE DIRECTOR

19 DISSENT _____

20
 21 DISSENT _____

1 SERVICE LIST FOR:

BOB B. WATKINS D/B/A EAST SLOPE WATER
COMPANY

2
3 DOCKET NO.:

W-01906A-09-0283

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6 MANAGEMENT, INC. for
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